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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,095	03/11/2004	John Parker Burg	ABS2003-004	6037

7590
Robert W. Brown
2747 Highway 160
Whitewright, TX 75491

07/12/2007

EXAMINER

LAUX, JESSICA L

ART UNIT	PAPER NUMBER
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3635

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/798,095

Applicant(s)

BURG ET AL.

Examiner

Jessica Laux

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tapered flanges of the studs (as in claim 3) must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Line 3 recites "said spine member" in reference to the flanged studs however the flanged studs have a 'spine channel" and the rail members have a "spine member" therefore it is unclear whether line 3 is referring the studs or rail members. Further the limitations of claim 3 have not been described in the specification and drawings in such a way as to enable one skilled in the art to make and or use the invention.

Claim Objections

Claims 18 and depending are objected to because of the following informalities: claim 18 recites the limitation "said symmetric recess (and connectors). There is insufficient antecedent basis for this limitation in the claim. For the purposes of examination it will be interpreted that claim 18 should correctly depend from claim 17 (thereby providing antecedent basis for the limitations of claim 18).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Jones (4114333).

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Regarding claim 1: Jones discloses an improved wall construction for positioning a plurality of rigid, self-supporting panels (26) to provide exterior walls and/or divide or partition interior building space, said panels having a substantially rectangular shape with an inner and outer face and a top edge, a bottom edge, a front edge and a rear edge, said wall construction comprising:

a plurality of top rail members (164, 166; as seen in figure 9) each having a substantially flat elongated rectangular shape with a first end and a second end and having a raised spine member (in the center where the wood connects the two members) spanning from first to second end, said rail members suitable for placement along the top of a wall line in end-to-end relative arrangement;

a plurality of bottom rail members (the bottom member as seen in figure 2) each having a substantially flat elongated rectangular shape with a first end and a second end and having a raised spine member (138, 152; figure 2) spanning from first to second end, said rail members suitable for placement along the bottom of a wall line in end to end relative arrangement; and

a plurality of vertically oriented flanged stud members (42G; figures 4 and 7) each having a top end and a bottom end and a substantially hat-shaped cross section that includes a large flange and a small flange joined together by a spine channel (70) located therebetween, said large flange, small flange, and spine channel each having a substantially flat outer surface with said outer surfaces in substantially parallel respective position and said large and small flanges being in planar respective position (figure 7), said top and bottom ends each having a lateral slot (130) for slidably

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receiving said raised spine members of said top and bottom rails therein (figure 4), said lateral slot oriented substantially parallel to said small and large flange, each said flanged stud member further disposed between a top and bottom rail member, thereby providing a frame suitable for the reception of one or more rigid, self-supporting panels.

Regarding claim 4: The improved wall construction of claim 1 wherein each said lateral slot includes an adjacent tab (160; figure 2) with each said tab positioned to lie adjacent to a said raised spine member slidably received within said lateral slot.

Regarding claims 5-6: The improved wall construction of claim 4 wherein each said flanged stud is attached to said top and bottom rails by means of a penetrating fastener, bolt, (162) positioned through said tab and terminating in said raised spine member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (4114333).

Regarding claims 13-14: Jones discloses the improved wall construction as in claim 1 above, but does not expressly disclose that the stud members are made of thermosetting polymer-based material or metal. However, applicant has not disclosed that the claimed materials provide an advantage, solve a problem or are for a particular

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purpose; rather applicant discloses in the specification, page 15, paragraph 0043 that any material of sufficient strength and stiffness is acceptable. Furthermore one would have expected Jones stud and applicant's claimed stud to perform the same considering the stud design and use. Therefore, at the time the invention was made it would have been a mere matter of design choice to one of ordinary skill in the art to modify the stud of Jones to be of metal or thermo-setting polymer based material because both would perform the same function of providing load support and structure to the wall construction. Therefore it would have been prima facie obvious to modify Jones to obtain the invention as in claims 13-14 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Jones.

Regarding claim 16: Claim 16 merely recites the obvious method steps of "attaching top rails", "attaching bottom rails", and "placing studs" (where the rails and studs are as disclosed above) to construct a wall partition as disclosed by Jones.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2 and 9-12, 15, 17-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 7073302 in view of Jones (4114333).

Regarding claims 2, 9-12, 15 and 17-19: US Patent 7073302 discloses a wall partition and method of constructing as in claims 2, 9-12 and 15 and 17-19, but does not expressly disclose a top and bottom rail as in applicant's claims. Jones discloses a wall partition construction including top and bottom rails with spine members and flanged stud members with channels to accommodate the spine members of the rails (as described above). It would have been obvious at the time the invention was made to modify US Patent 7073302 to have the top and bottom rails and flanged studs to accommodate the spines of the rails to provide a structure (the rails) for securely fastening the wall partitions to the floor and ceiling to provide a stable wall structure and the spine and groove structure to provide a secure connection between the studs and rails.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-

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8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JEANETTE CHAPMAN
PRIMARY EXAMINER
ART UNIT 3635

JL
06/28/07